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May 26, 1958
Opinion No. 58-82

REQUESTED BY: Arizona Highway Patrol

OPINION BY: ROBERT MORRISON, The Attorney General

QUESTION: What is the meaning of the phrase
"or so close thereto as to constitute an immediate hazard" in A.R.S.
§ 28-772?

CONCLUSION: See body of opinion.

A.R.S. § 28-772 reads as follows:

"§ 28-772. Vehicle turning left at intersection
The driver of a vehicle within an intersection
intending to turn to the left shall yield the
right of way to any vehicle approaching from the
opposite direction which is within the intersection
or so close thereto as to constitute an immediate
hazard, but such driver, having so yielded and having
given a signal when and as required by this chapter,
may make the left turn and the drivers of all other
vehicles approaching the intersection from the op-
posite direction shall yield the right of way to the
vehicle making the left turn." (Emphasis supplied)

We would like first to point out that the essential and practical problem involved is under what circumstances a traffic officer should issue a citation to one who has made a left turn at an intersection. Stated another way, the question you have asked is for a clarification as to how a jury would be instructed concerning the meaning of the above clause. Here again, the instruction to the jury on this question would in every case differ according to the facts of that case.

The meaning of "immediate hazard" where applied to traffic regulations has been the subject of several court decisions in various states. Sometimes the phrase is used in connection with traffic entering a through street or highway after first having stopped. At other times the phrase is used in connection with left turns as in A.R.S. § 28-772.

One interpretation (relating to a through street) is that, if the operator of the oncoming vehicle is forced to suddenly and sharply check his speed or come to a halt in order to avoid a collision, the oncoming vehicle is an "immediate hazard". Tuseo v. Duphin, 88 A.2d 813. It was held in another "through street" case that, where a vehicle was 60 to 100 feet from the intersection, it constituted an "immediate hazard". Meo v. Miller, 85 So.2d 568. Another case held that an approaching vehicle less than four seconds traveling time from the intersection is an "immediate hazard". Central Petroleum Co. v. Wright, 290 S.W.2d 465.

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However, where a vehicle traveling at 20 miles an hour was about 100 feet from the intersection, it was not an "immediate hazard". This latter case involved a left hand turn. Fisher v. Wichita Trans. Corp., 134 P.2d 393. Another left hand turn case held that an automobile approaching at 40 miles an hour, one-quarter of a mile away, was not an "immediate hazard". Autrey v. Swisher, 155 F.2d 18.

Based on the above cases, it seems clear that the only general rule that can be given is that one making a left turn must do so only when it is safe to do so; that is, when approaching traffic will not be endangered and will not be required to suddenly slow down or halt to avoid a collision.

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cc

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